UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IN RE STARBUCKS EMPLOYEE GRATUITY LITIGATION

MASTER FILE
08 Civ. 3318 (LTS)

This Document Relates to:
All Actions

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DEFENDANT STARBUCKS CORPORATION'S STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT PURSUANT TO LOCAL CIVIL RULE 56.1

Pursuant to Local Rule 56.1, defendant Starbucks Corporation states the following material facts to which it, as the moving party, contends there is no genuine issue to be tried in connection with its motion for summary judgment pursuant to Fed. R. Civ. P. 56.

I. Plaintiffs' Work History With Starbucks

1. Jeana Barenboim worked as a barista at a store located in Queens, New York for approximately two months, from October 3, 2006 to December 13, 2006. (Barenboim Tr. at 63:12-15, 70:14-20, 99:1-7, 179:16-180:7; 185:5-9 (attached as Exhibit 1 to Declaration of Nathan J. Oleson ("Oleson Decl.")).)

2. Jose Ortiz worked as a barista at a store located in Manhattan for less than two months, from February 4, 2008 to March 28, 2008. (Ortiz Tr. at 94:7-10, 109:16-20, 201:8-19 (attached as Exhibit 2 to Oleson Decl.).)

3. As new baristas, Barenboim and Ortiz were paid a starting wage of $8.75 per hour. (Barenboim Tr. at 61:5-14; Ortiz Tr. at 172:22-173:3.)

II. Plaintiffs' Stores and Job Duties

4. Starbucks stores include baristas, shift supervisors, store managers, and, in some stores, one or more assistant store managers. (Barenboim Tr. at 61:19-22; Ortiz Tr. at 143:13-144:15.) Ortiz's store did not have an assistant store manager. (Ortiz Tr. at 146:20-147:1.) Barenboim's store did have an assistant store manager. (Barenboim Tr. at 61:19-22.)

5. Store managers are salaried, full-time "partners." (Ortiz Tr. at 173:10-11; Rogers Tr. at 25:20-22, 71:25-72:2 (attached as Exhibit 3 to Oleson Decl.).) The store managers had "ultimate responsibility" in the store and supervised all the partners in the store, including the baristas and the shift supervisors. (Barenboim Tr. at 207:10-13; Ortiz Tr. at 146:1-147:6.)

6. Barenboim and Ortiz's store managers were responsible for interviewing, hiring, scheduling, evaluating, promoting, disciplining, and firing the store partners. (Barenboim Tr. at 64:1-8, 67:22-68:10, 143:1-17, 144:2-7, 149:20-150:11; Ortiz Tr. at 100:5-11; 106:4-11; 147:1-6; 160:2-4; Rogers Tr. at 51:5-52:17, 79:13-80:10.) Assistant store managers are also involved in these tasks. (Rogers Tr. at 31:14-32:8, 51:5-24, 79:17-21.)

7. Barenboim, Ortiz, and the other baristas they worked with were part-time, hourly employees. (Barenboim Tr. at 154:9-11; Ortiz Tr. at 105:2-5, 172:19-173:9.) Plaintiffs' duties as baristas were primarily focused on customer service and included taking orders from customers, operating the cash registers, and making and serving drinks. (Barenboim Tr. at 132:10-13; Ortiz Tr. at 101:1-6, 141:22-142:12, 152:16-153:2.) Plaintiffs also cleaned, washed dishes, bussed tables, and stocked product. (Barenboim Tr. at 127:4-20; Ortiz Tr. at 142:13-22, 149:13-19.) The baristas in Barenboim and Ortiz's stores also participated in training new partners and providing coaching on how to perform tasks. (Barenboim Tr. at 206:6-21; Ortiz Tr. at 114:1-13, 123:1-19, 162:2-7.)

8. The shift supervisors in Barenboim and Ortiz's stores also were hourly, part-time partners. (Ortiz Tr. at 173:4-9.) The shift supervisors performed all the same tasks as baristas, including taking orders, working the cash registers, making drinks, preparing food orders, and performing lobby sweeps and cleaning. (Barenboim Tr. at 135:15-136:10, 137:2-10, 139:5-22; Ortiz Tr. at 153:21-155:16.) Like baristas, Starbucks expects that shift supervisors' primary responsibility is to provide customer service. (Rogers Tr. at 32:11-17, 83:10-14.)

9. In Ortiz's store, shift supervisors spent "most of the time" performing the same tasks as baristas. (Ortiz Tr. at 155:8-16.) In some cases, two shift supervisors worked at the same time, in which case one functioned solely as a barista. (Ortiz Tr. at 155:17-156:5; *see also* Barenboim Tr. at 152:2-7.) Barenboim could not estimate the amount of time shift supervisors spent on barista tasks in her store because it varied from shift to shift. (Barenboim Tr. at 135:17-138:2.) However, Barenboim admitted that shift supervisors performed solely barista tasks on some shifts. (Barenboim Tr. at 135:17-138:2.) Barenboim also testified that some of the duties performed by shift supervisors in addition to their barista duties could be performed at the same time shift supervisors worked on the bar serving customers. (Barenboim Tr. at 138:3-139:4.)

10. The shift supervisors performed some tasks in addition to their barista duties. (Barenboim Tr. at 167:17-168:2, 198:17-200:11; Ortiz Tr. at 156:6-14.) They opened and closed the store, which involved unlocking/locking doors and deactivating/activating alarms. (Barenboim Tr. at 130:5-8, 167:17-168:2; Ortiz Tr. at 150:13-151:1.) They also handled cash, which involved opening and depositing money into the safe and counting the tills. (Barenboim Tr. at 130:5-11, 140:13-22; Ortiz Tr. at 150:16-151:11.) Shift supervisors also made sure partners, including themselves, were properly deployed at the various work stations in the store, such as the cash registers and the bar (Barenboim Tr. at 140:1-12, 167:17-169:22; Ortiz Tr. at

164:22-166:22.) Shift supervisors could also remind other partners of when to take their scheduled breaks and sometimes addressed customer complaints. (Barenboim Tr. at 140:1-6, 198:20-199:14) According to Barenboim and Ortiz, these are the only additional tasks shift supervisors performed in their stores. (Barenboim Tr. at 167:17-168:4; Ortiz Tr. at 156:6-14.) The shift supervisors could continue to work at the bar and serve customers while performing their additional responsibilities of "maintaining the floor, assigning baristas to positions of bar..., telling them when to go on break . . . [and] making sure they clocked out correctly, clocked in correctly." (Barenboim Tr. 138:10-139:4.)

11. The shift supervisors did not interview, hire, transfer, evaluate, promote, issue formal discipline, fire, or determine pay for baristas or any other Starbucks partners. (Barenboim Tr. at 145:20-146; Ortiz Tr. at 170:1-171:18; Rogers Tr. at 79:22-80:3, 80:8-14, 196:13-23; Declaration of Nancy Murgalo ¶ 3 ("Murgalo Decl.").) The shift supervisors also did not prepare the work schedule, approve overtime work, or process payroll. (Ortiz Tr. at 159:13-160:4, 163:14-20; Murgalo Decl. ¶ 3.)

III. Distribution of Tips in Plaintiffs' Stores

12. Barenboim and Ortiz's stores included containers where customers could place tips. (Barenboim Tr. at 134:13-22; Ortiz Tr. at 174:18-22.) Starbucks maintains a policy that specifies that tips are to be distributed among baristas and shift supervisors according to hours worked. (Barenboim Tr. at 91:21-92:4, 174:18-175:5; Rogers Tr. at 132:7-12, 188:19-24.) Under Starbucks policy, all tips left in the tip container are distributed to baristas and shift supervisors. (Barenboim Ex. 6 (attached as Exhibit 4 to Oleson Decl.); Ortiz Ex. 18 (attached as Exhibit 5 to Oleson Decl.); Rogers Tr. at 131:1-19, 132:7-12; 147:20-23.)

13. At the end of each week, the shift supervisors and baristas determine an hourly tip rate by dividing the total amount collected by the total number of qualifying hours worked that week by baristas and shift supervisors. (Barenboim Tr. at 91:21-92:4; Ortiz Tr. at 173:15-174:17.) Each barista and shift supervisor receives a portion of the tips equal to the store's hourly tip rate for the week multiplied by the number of hours he or she worked. (Barenboim Tr. at 91:21-92:4; Barenboim Ex. 6 (attached as Exhibit 4 to Oleson Decl.); Ortiz Tr. at 173:15-174:17; Ortiz Ex. 18 (attached as Exhibit 5 to Oleson Decl.); Rogers Tr. at 131:1-19, 132:7-12.) Tips were calculated and distributed on a weekly basis in accordance with this policy in Barenboim and Ortiz's stores. (Barenboim Tr. at 174:18-175:5, 176:10-12, 177:7-178:4; Ortiz Tr. 176:2-9.)

14. Certain hours that do not involve customer service are excluded from the tip calculation. (Barenboim Ex. 6 (attached as Exhibit 4 to Oleson Decl.); Ortiz Ex. 18 (attached as Exhibit 5 to Oleson Decl.); Rogers Tr. at 143:19-22, 144:5-9, 145:19-25, 209:9-10.) For example, when new baristas undergo training—reading training materials and policy manuals, completing written and computer-based training modules, attending an off-site workshop, and working with more experienced partners ("learning coaches") to practice tasks—they record their time as "training," and they do not receive tips for that time. (Rogers Tr. at 87:16-88:4; *see also* Barenboim Tr. at 81:1-82:4, 84:4-86:7, 90:8-19, 117:5-11; Barenboim Ex. 3 (describing training activities) (attached as Exhibit 6 to Oleson Decl.); Ortiz Tr. at 109:3-10, 111:17-112:13, 114:1-13, 115:11-20, 197:18-198:11 (same).) When baristas work "practice shifts" during the training period, that time is recorded as "regular," and these hours count towards the calculation of tips. (Rogers Tr. at 87:16-23, 91:14-22.)

15. For example, during his first week of employment, Ortiz reviewed booklets and worked on training programs on the store's computer (Ortiz Tr. at 109:3-111:16, 115:3-20, 123:7-16,131:5-12.) He also made some practice drinks under the supervision of his learning coach, but they were not served to customers. (Ortiz Tr. at 111:4-16.) Ortiz did not perform any customer service work during his first week. (Ortiz Tr. at 110:18-112:18.) Ortiz's time during his first week of work was recorded as training, and he did not receive tips during this period. (Ortiz Tr. at 193:7-194:7 and Ortiz Ex. 3 (attached as Exhibit 7 to Oleson Decl.).)

16. Ortiz continued to spend some time during his second week of employment completing training modules in the back of the store. (Ortiz Tr. at 194:8-19.) This time was coded as "training" and was not eligible for tips. (*Id.*; *see also* Ortiz Ex. 3 (attached as Exhibit 7 to Oleson Decl.).) Ortiz also spent time on the floor during his second week of employment serving customers. (Ortiz Tr. at 194:8-195:20.) Ortiz was coded as "regular" for this time and was paid tips. (*Id.*; *see also* Ortiz Ex. 3 (attached as Exhibit 7 to Oleson Decl.).) Ortiz claims that, while training during his second week of employment, he may have given some of the less "difficult[]" practice drinks he made to customers during time coded as "training." (Ortiz. Tr. at 111:4-16, 207:20-208:21.) However, Ortiz does not know how often this occurred or how much of his training time during his second week involved customer interaction. (Ortiz Tr. at 209:5-210:2.)

17. Barenboim and Ortiz do not know for sure the reasons why customers leave tips in the tip containers. (Barenboim Tr. at 170:9-171:4; Ortiz Tr. 177:2-8.) However, Barenboim and Ortiz believe that tips in the container are left for customer service work such as serving customers, ringing the register, taking their order, and cleaning the store. (Barenboim Tr. at 134:18-135:8; Ortiz Tr. at 176:18-178:11.) Barenboim and Ortiz concede that shift supervisors

also performed work that they believe led to tips, and they admit that some portion of the tips could have been intended for shift supervisors. (Barenboim Tr. at 170:5-21; Ortiz Tr. at 153:5-155:16; 182:7-183:3.) No customer ever handed a tip directly to Barenboim or Ortiz. (Barenboim Tr. at 171:5-8; Ortiz Tr. at 175:3-12.) Barenboim does not know how much she would have received in tips on any particular day or shift in the absence of Starbucks policy. (Barenboim Tr. at 159:3-164:5.)

18. Barenboim and Ortiz understood that they would be paid tips consistent with the company's policy. (Barenboim Tr. at 175:11-176:6; Ortiz Tr. at 173:15-174:14.) Starbucks policy does not guarantee partners will receive a specified amount in tips each week. (Barenboim Ex. 6 (attached as Exhibit 4 to Oleson Decl.); Ortiz Ex. 18 (attached as Exhibit 5 to Oleson Decl.); *see also* Murgalo Decl. ¶ 4.)

Respectfully submitted,

DATED: June 1, 2009

s/ Jessica W. Paniccia

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Defendant Starbucks Corporation's Statement of Undisputed Material Facts in Support of Motion for Summary Judgment Pursuant to Local Civil Rule 56.1 was served this 1st day of June, 2009 via ECF filing notification on the following:

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